

GEORGE R. DEMPSEY, JR.
Mayor

BARBARA ILARIA
Municipal Clerk

JOSEPH R. DeLORIO
Municipal Administrator/
Chief Financial Officer

BOROUGH OF MANASQUAN
COUNTY OF MONMOUTH
NEW JERSEY 08736

The Manasquan Planning Board held a Regular meeting on Tuesday, September 6, 2011 at 7PM in the Borough Hall, 201 East Main Street, Manasquan, New Jersey.

Chairman John Burke called the meeting to order stating that this is an Open Public Meeting published and posted according to law. He then asked everyone present to please stand and salute the Flag.

ROLL CALL:

Board Members Present:

**Mayor George Dempsey
Councilman McCarthy
Michael Sinneck**

**John Muly
Neil B. Hamilton
Leonard Sullivan**

**Patrick Callahan
John Burke
Peter Ragan**

Professionals Present:

**Geoffrey S. Cramer – Planning Board Attorney
Albert D. Yodakis – T & M Planning Board Engineer/Planner**

Board Members Absent:

Joan Harriman Jay Price Bill Buble

John Burke said the first item we are going to do tonight is welcome a long-time member who left when he retired from the Borough and just couldn't bear to live without us so he had to come back to us again, Neil Hamilton. Geoff Cramer gave Neil the Oath of Office.

APPLICATION # 05-2011 – Constantino, Michael – Manasquan Plaza, Inc. – 95, 97, 99 Atlantic Avenue – (Dairy Queen) Site Plan – Subdivision of store, carried from August 2, 2011 with no re-notice or re-publication. Joseph Lane is the attorney representing Michael Constantino, all witnesses were sworn in at the last meeting. All Board members have received the letter from Mr. Lane's office written by Theodore Costa regarding the status of the environmental litigation. Mr. Burke asked Mr. Cramer how this affects the meeting tonight in any way. Mr. Cramer said he thinks it raises the prospect that there is ongoing discussion to enforce the action by the DEP with respect to some alleged ground water contamination that obviously is of great concern to members of the Board and although we have a status report there is no indication that the matter has been completed and I would recommend to the Board that should we as a result of the hearing decide to approve an application that one of the conditions they may also want to consider is that no permit is to be issued until such time as the letter of no further objection or conformance is received from the NJDEP. John Burke asked if all the Board members have read the letter and are there any questions from the Board on this DEP problem. Al Yodakis said it's still an open issue that's under the prevue of the DEP until they receive an NFA letter, very similar to most of the gas stations in the State, pretty standard. Mr. Lane said he believes we left off at the public portion of the meeting. John Burke said we opened the public portion because there were people here that night, we didn't permanently close the public portion

we closed it for that night but we can re-open it again tonight. Mr. Lane said he has no further witnesses he doesn't know if the Board has any further questions of my clients. The professionals aren't here because they were asked all their questions at the last meeting. No Board members had any further questions of the applicants. Next, Mr. Robert Guttman attorney for the adjoining property owner, Clark Brother's property. We submitted back in August right after the meeting this Directive and Notice to Insurers, the document speaks for itself. It is a NJDEP Document and it's for the purpose of acknowledging findings of fact and conclusions reached by the DEP as to the extent of contamination, PCE or dry cleaning solution, contamination on the subject Constantino property which has leached and migrated onto my client's property. I'm not going to go into the litigation between the parties; it's a fact that there is current litigation. I will dispute the facts that are stated in Mr. Costa's letter. Just for purposes of pursuit here I'm objecting to the substance of that letter. Mr. Costa isn't here to testify to that letter number one, number two it was submitted today or yesterday, I got it today, it violates the MLUL, it should have been submitted at least ten days prior to the hearing to have the public available for the public's review as a result I object to its acceptance by the Board for purposes of its review. For my purposes here Mr. Costa makes a number of statements in there and again I don't have the opportunity to cross-examine him about settlement negotiations which is completely false, actions by his client in remediating the site which is completely false. What's important is the determination that there is extensive contamination and this Board is as a quasi governmental body empowered with strong powers with regard to Variance applications and Site Plan approval and one of the things that the Board does with regard to this is to make sure it's protecting the public health, safety and welfare. Why it's important is because if you have an applicant coming before you asking for the Board to grant it relief, the question is is the applicant coming before the Board with clean hands? Is it coming before you saying I've done nothing wrong Board; here is what I'm doing, please come and help me. It's the position of the objectors, the position of the adjoining property owner that this applicant has not. This applicant has since 2007 has been identified as PCE contamination on this property, has done nothing til very recently so now five years, over four years into this, there had to be an action of a law suit, had to be action by the DEP. Has gone through four environmental experts without going through one spade of removing contaminated soil on the property. Has done nothing. So, while notwithstanding Mr. Costa's assertions that things are being done, remediation is being done, the DEP is satisfied. It's complete fallacy. Nothing has been done. So we are asking the Board to seriously consider when you review an application from somebody coming to you with open hands saying please help me out, please help me out with whether it be my financial circumstances to be able to lease to someone else, these people have to have an obligation to come before as honorable citizens and say we are doing everything we are supposed to do and I'm sure if you would ask this gentleman questions you would find out that they have done very little if anything except for a gun being pointed to their heads by the NJDEP saying you've got to do something now or else. That's what we have a problem with so we are asking you in your review of this matter to take all of this into consideration whether this applicant has done everything they possibly could to the benefit of the citizens of Manasquan. Forgetting my clients damage, but to the citizens of Manasquan, should they be given permission to do what they want to do from a quasi governmental board such as yourself, when they have done nothing to help anyone

else. That's all I have to say. Joe Lane said he disputes that his clients have done nothing, how the contamination got there certainly wasn't from the ice cream store that has been operated by his clients, the fact that they own the facility and they are the owners so they are responsible for the actions of their tenants and they are addressing this issue. They have an attorney, they are working with the DEP. I'm not involved in that law suit and like I said at the last meeting this is not a Board to address those types of issues, we are asking for some relief to allow the subdivision of the larger unit into two smaller units and some tables and a picnic table outside. We have brought our expert witnesses, they reviewed the site, the site is suitable for it and it would be a positive impact to the community. The issue with the DEP he believes, there are factual issues of where the contamination came from, there is contamination on the property behind them and this site has been used by those owners as well. So be that as it may anything that this Board does can be conditioned upon a no further action letter from the DEP, or something to that effect. Any Resolution passed by this Board would be subject to the rules and regulations and accommodations of the State of New Jersey. I don't think that we are asking for anything unreasonable. Michael Sinneck asked when they first became aware of the contamination. Mr. Lane said this directive was issued in February of 2009, so I don't know when the DEP became aware of it. There were some remedial investigative activities done at the Clark Brothers site that indicated some contamination that was back in 2007. Mr. Guttmann said what had happened was the Clark Brothers were cleaning up their site and at the time they had obtained a NFA letter from the NJDEP, they were removing a waste oil tank which was the last thing to be removed and then the tank was removed which was in between the two, it's a very shallow area between the Clark Brothers if you're familiar with the site in the back of the Dairy Queen, in the back of those properties. Actually, I was very surprised how shallow it is. When they removed it they found not in the tank itself but in the surrounding area when they did the soil sampling a high level of PCE contamination. So the DEP says wait and we don't think and actually their language was in October of 2007 the DEP issued a No Further Determination for the site, notwithstanding that the PCE on the Clark Brothers property was from an unknown source unrelated to the investigative areas of concern. So, the DEP basically said we don't believe it is from the waste oil tank but we need to look it up so our experts that we had hired and spent a considerable amount of money to clean up our property goes and tests it and would you know the highest concentration is right behind the dry cleaners, and it was dry cleaning solution so at that time nobody did anything with it. The Constantine's were notified everyone was notified and nothing happened. Ultimately the Clark Brothers went into receivership. The Court appointed the receiver who is here this evening, the receiver hires us and we put the DEP on notice saying DEP if you don't do anything we are going to sue on your behalf. The DEP wakes up sends everybody letters and said we are putting everybody on notice of doing this, we then file our lawsuit. So, I would positively argue that the Constantino's knew as early as 2007 the DEP Directive was in early 2009. Our expert has determined that it actually has hit the groundwater. What I will acknowledge what they have done is the third expert, they are on their fourth expert because the few experts have given them numbers that they are not very comfortable with the cost to remediate the property. Our expert has stated the cost to clean up our property which we allegedly contaminated was well in excess of \$100,000. Their cost which of course my client doesn't have a penny, they are out of business, other than the property they own nothing.

The last expert that just did a full blown investigation for the DEP to identify the extent of contamination happened; they identified it found it underneath the Dairy Queen and the highest concentration in the parking lot all over the properties. They met with the DEP recently to try and resolve this issue, it didn't get resolved, and they are now on their fourth expert who has now given them I believe a number I believe they are hopefully comfortable with. Mr. Burke asked Mr. Constantino what he is preparing to do in this case, in other words have you made any preparations to do any cleanup on this or to answer any of the DEP accusations and so on. Mr. Constantino said it's not like we haven't done anything, I have spent over \$80,000. with this problem, Mr. Guttman hasn't said he didn't get a NFA letter that is false. He's giving us a hard time to go around this property to test the soil; he doesn't mention any of that. John Burke said it seems like we have two sides accusing each other which makes me believe even stronger what Mr. Cramer's recommendation was, that if we get any kind of a positive result tonight that it should be 100% no permits given, nothing given until this is settled. This affects the Town, not just your sites, so if you get an approval tonight, it's my opinion, it's Mr. Cramer's opinion we'll find out from the rest of the Board at that point that anything done on that site should not be done until this is settled. Mr. Constantino said when you have contamination in the water he thinks that the concentration is .001, you will probably never get a NFA letter from the State of New Jersey for this type of contamination. You'll never get it. I know Manasquan the Borough also has a contamination problem, the Municipal Building has had a contamination problem, and it probably still does. John Burke said that's not part of this case. Mike Constantino said I understand that, but you are asking for something that will probably never be done. We had a vapor and treatment system I put in the whole building

so everybody is safe, that's been working fine. I've spent so much money with these consultants and it's not like I'm switching consultants because I want a better price, what it is it's very expensive and we are in a position that I don't know what else to do, but we are dealing with it on a daily basis and we are going to clean it up, I have two estimates and we are going to clean it up. Are they going to clean it up to the extent that the DEP requires it to do, maybe never. So to put a contingency on that just for us to subdivide the store I think it's very unfair, it might never happen. John Burke said we have a recommendation from our lawyer and we will address that ok. In the meantime I just want to remind the Board that we have three major things with this case, first is to subdivide the store into two equal size stores, the other item was four tables with sixteen chairs, and the third item was the outside picnic table by the bike rack. We have heard all the testimony on this, we did hear from the audience on it as well. We would like to just hear any comments or opinions or questions from the Board members on those three items. Let the record show that Neil Hamilton listened to the tapes and can participate in this tonight. Owen McCarthy said if you build it they will come, if you put a picnic table out there you are inviting people of all ages not just your customers to be there. Mr. Lane said he hadn't submitted this before but he had a picture of a folding picnic table which they could put in at night. Owen said we have heard from the neighbors and the noise is an issue, now if the table could go inside that's another story. Mr. Constantino said we are just trying to get the kids off the curb, if you don't want the table which is just a safety issue tell me what to do. We can cut it out it's not a big deal. Lenny said he agrees with Owen, it would encourage people to stay there, I'm concerned about the neighbors. Mayor Dempsey said he has a

problem that by subdividing it, you are going to increase traffic and parking is already a problem there. Mr. Lane said our traffic engineer testified already that parking wasn't an issue. John Burke said in his opinion and we had questions on that because of the time of day that he ran his tests and the time of year that he ran his tests, so yes I understand what he said but again it's in his opinion that it was ok. Neil Hamilton voiced his opinion, he feels they don't need the table out there. As far as some of the other issues a resident brought up about the light spillage onto her property, they occurred because of the renovation on the corner and widening the roadway, he thinks after that was brought up at the last hearing that Mr. Constantino would have stood up and said let me get a landscaper in here and try to deal with this issue and get that out of the way, put that to bed, so that's not a concern to the public. Living in the area you are probably always going to have noise in the evening, that's not going to go away, the kids are out late at night, 12 year olds don't go home at 5 o'clock like we used to when I was younger. As far as the traffic I've been keeping an eye on that property and always have. I am pretty aware of what goes on in the Community and since your application I personally have not seen that lot full. There are some issues there where the tenants are not supposed to park there, that needs to be rectified. There was a concern a few years back where at the late hour that you didn't want a female to have to go over to the public parking lot at 11 o'clock at night but that was a safety issue and I think the Planning Board relaxed that requirement that after dark the employee could move their car back over to the Dairy Queen lot for safety purposes. I don't have a problem with that but I do think the dry cleaner truck, or other store owner vehicles should be moved. As far as the splitting of the store, the application was always for three stores. It's certainly hard times and things change, the last thing we do want to see as a Planning Board is an empty store. On the other hand and I don't know the answer to is, and I don't know that we could even ask the question is if the store is to be broken in half, is the rent going to be broken in half for the operator. We're not in the business here to make sure that the owners of the center make more profit; we want to see that the stores are occupied. If you could address that issue there and lastly the thing is what type of operation can go in there. Real estate was one of the approvals; I think Real estate is probably a bad one because it generates a lot of traffic, a lot of cars, and a lot of employees. You are not going to jeopardize your own center. I think the Board would probably like to know what your ideas are as to who your tenants may be, who you might have in mind to rent the facility so to have a low impact there that doesn't affect the parking and/or the neighborhood. Mr. Constantino said he could address a couple of things, the first was with the bench outside. He talked to Mr. Marucci who is here currently and we don't want any problems with the neighbors, we've been there such a long time and our neighbors are our customers and I can't police it when I'm gone which you made a good point. At night sometimes the kids do come by on the bike path and they hang out and I'm not there, we close the lights at a certain time so nobody hangs out there. Is it possible for them to hang out later on, absolutely? So, that's why, let's get rid of the bench, that's fine with me. If the neighbors are happy, less noise if that's an issue we are willing to do that. The other point you brought up was about the rent, the reason why we are subdividing that store is my tenant is having a hard time. Its 3400 square feet, in order for that store to even break even, you have to have the volume and the Board doesn't want to have a volume, we don't want additional traffic coming into the lot. That's the only way this store is going to be profitable to be size. When we cut it in half absolutely he's going to

be paying half the rent and half the maintenance. Right now he doesn't even put on his two brand new air conditioning units which I put on his side; he doesn't operate them because he can't afford to operate them. The economy isn't that great, as you all know, that's one issue and we've thought if he's willing to take half that space because maybe he can make it. The other side we do want another business that's owner operated, something not to generate that much volume. You suggested a real estate might be too much, a real estate is considered a low impact business, but if you think it's not, I'm willing to put something there that's going to be beneficial to everybody. I don't want a store there that's going to take up my parking or the tenants. If the tenant leaves now, half the building is vacant, that's not good for anybody. It's not good for us, it's also not good for me to help pay for this DEP issue with I've been struggling with right now. It's a big issue, it's a big problem and we are doing the best we can to resolve this. But again we are going to court over that so I don't know if that's really an issue with the Board. Owen asked if in the subdivided store they are looking to put table service and Mike Constantino answered no, none. Owen asked if there was going to be a counter with seats or you just basically buy your bagel and coffee and how many seats are you proposing. Mr. Lane said originally we asked for four tables with sixteen chairs, we can cut that down to two tables, we are trying to do our best to help this guy, that's why we are here. Mike Constantino said we are not going to do a picnic table outside now; we're getting rid of that. Again it's a safety issue I think, when the kids go next door and buy chips and soda whatever they have let them sit at the table for a couple of seconds to eat, it's not like there's going to be any waitress service or anything like that, and we don't need four tables. Mr. Constantino said this has been a rough year for us, the County closed the street down it was supposed to be three months but it was eight months because Manasquan wanted to put new sewer lines in so that really put a damper on everybody. Then last week with the hurricane we got devastated, we had no power and were closed for five days, we lost everything in our store, everything. It's been a tough year. John Burke said so you are willing to go down to two tables and eight chairs and they said yes. Mr. Sullivan asked if there is anything they can do about the hedges or the plantings that would block the lights from the people across the street? John Burke asked Al what the regulations are on site because that's what this whole thing is about, the turning site on that corner. What are the State/County regulations on that? Al said that's going to be a County call, he is not sure that the County put in to place any site triangle easements when they did that, so the applicant will probably have to apply to the County with whatever landscaping plan and show them where the plantings are because as a County intersection they would have the say on what went where. Mike Constantino said well the County didn't want any trees there, they cut all our trees down, we could only put those small shrubs. The person who is complaining, the County provided a tree to cover their window. John Burke said the testimony from the neighbors last time was that the headlights of the cars that pull into those parking places shine straight across the street into their windows. A tree isn't going to stop that, especially if the tree is only four to six inches around. Hedges are the only thing that is going to stop it. Has the County given you any indication of what they will allow you to put in as far as hedges go? Mr. Lane said there are low shrubs there. Mr. Constantino said they are about a foot and a half. Mr. Constantino said we were going by what the County told us to put in, that's what they told us they said you can't put anything else there. The whole idea was they took most of the property and all that was left was just those little shrubs; if you want us to put trees we

can't do it. Al said if it's in an area where the county considers site distance to be necessary typically 30-inches is as high as they will let you go with a plant, so it needs to be a low shrub, hedge row maintained at 30-inches above the pavement. John Burke said SUV and truck headlights are above 30-inches, that's the problem. John said to make it a little easier on the neighbors, could you please check with the County again and find out exactly what they will allow you to do and go to that maximum height. Motion to open the meeting to the public was made by Mayor Dempsey, seconded by Councilman McCarthy, all in favor none opposed.

Audience members coming forward:

Andrew Marcucci – 37 North Main Street – He wants to reiterate and stress it's been spoken by the Board tonight, they really kind of hit on a lot of things that my wife and I spoke about the last time we had this meeting. With respect to the issue to trees and shrubs there and if this is irrelevant or wrong I take it back because I don't have 100% of the details on it. It is my understanding there is a five year timeline where they are allowed to have; there was an agreement with the Borough they were allowed to have those tall trees there which had expired. I think roughly before the intersection was completed. We are looking for something more than these shrubs that are really tiny. If cars have their headlights on we're on television, it's a spotlight right into the kitchen and the living room there. That is a separate issue; I can't believe the County can't approve hedges there high enough for car bumpers to block that. We don't want to see any extra signs on the property, stand alone signs. We are your neighbors; we're not here to throw unnecessary wrenches, although this whole mess with the DEP is making our heads spin as we have young children that are affected by something like this. That's entirely another issue. We have been neighbors for seven years that are asking for a lot of compromise and balance here we don't want the outside bench. We have a tree there because there was nothing done about the shrub and trees that were gone and provided a level of privacy and blocking of a lot of the activity and vision and at least provided a good balance and compromise which was missing since the intersection was completed. John Burke said but that's the County. Mr. Marcucci said well is it the County I think that's a question we have perhaps for another meeting another time. John Burke said again we have to go by our Engineer and he is familiar with the County laws. Mr. Marcucci said I understand, I've been to Freehold and spoken with the County Engineer, so I understand but that's something that we do have a concern with. We do have a concern with the type of business that is going to go in there. Is it going to create extra traffic, is it going to make it worse. We are the people who live there 24/7 and all the people who've testified to this previously said they drive by it; they keep an eye on the neighborhood. We are there and we understand and see better than most other folks around. We feel we know we are a relative expert on what happens there. We are asking the Board to seriously consider this because there are a whole host of issues that you have been presented with that we think this application just doesn't make sense right now. We hope you take that into strong consideration.

Mayor Dempsey made a motion to close the public portion of the meeting, seconded by Michael Sinneck, all in favor none opposed.

John Burke said since this is a very complicated application, we haven't done this in awhile but what I would like to do is I would like to poll the Board, I would like to give the applicant an idea of the feeling of the Board before we go to any kind of a vote.

Neil Hamilton said if it's approved the Resolution would have to be contingent on any approvals given would have to meet all the requirements of the DEP and the contamination, remediation being resolved. When that issue is off the table and the inspector for Clark's has been satisfied. We need to do that for the protection of the Community and the applicant does move on this rather quickly, we've got a piece of property right now that is of no value next door and it's been an eyesore and we've got to this issue resolved so we can get that property marketed. Secondly, I would agree to no picnic tables outside, I'm not opposed to subdividing the store. My only concern is what type of operation will go in there. If we were to approve the application with the caveat that the applicant would come back. Geoff Cramer said the Board would retain jurisdiction. Neil said he would lean toward the subdivision only because of economic conditions.

Lenny Sullivan said he's against the picnic table and he would be ok with two tables in the store. As Neil said he would like the DEP issue to be resolved as quickly as possible, he doesn't have any problem, you don't want to have an empty strip mall there and economic conditions are tough so he would consider splitting of the store, but he would like to have some say in what in there. Geoff said you would in his opinion, recommendation retain jurisdiction, so that if the applicant is successful getting an approval as to splitting the store he has to come back to the Board, identify what the use will be so you can take a look at that.

John Muly said not to beat a dead horse he agrees with what Neil and Lenny have already said. He would hate to see a store owner have to pack it in and we'd wind up with a half a mall empty and still not resolve whether it can be subdivided or not. He has no problem with subdividing it either if it's a low impact kind of a situation and also do something about shielding the neighbors with the headlights and things of that sort. He knows it may be a County issue but something should be able to be done to block the headlights even if we go up 30-inches or whatever it is for a headlight, that's not really blocking the triangle, he doesn't think on that area. That's what he feels right now and he would let the table go too.

Patrick Callahan he said he concurs with his three colleagues on the Board, he doesn't have any real objection to the subdivision as long as these conditions are met and we retain jurisdiction on the type of business that goes in the subdivided store.

Mayor George Dempsey said he is against it completely just on the parking angle. To be a successful business you need to have parking and the parking is just not there.

Councilman Owen McCarthy said he reiterate what was said, unfortunately the economy is not the strongest right now and he doesn't think having an empty store there is beneficial for the neighborhood or the Borough. He thinks that the problem would be if that store would go out and end up with a store such as a dollar store or some business like that you really would increase the flow of traffic in and out to the detriment of the immediate neighbors as well as the entire Borough. He would be in favor of the elimination of the table outside, reducing the number of tables inside which he thinks would minimize the people spending extended periods of time inside of the store and help to some extent the parking concerns also condition that we would retain jurisdiction concerning going forward as to what store can go in there next and condition things upon approval from the DEP. I am in favor of installing the 30-inch shrubs to help the neighbors to some extent as much as possible with the light concerns.

Peter Ragan said he would be inclined to vote for the subdivision based on the contingencies that his colleagues have mentioned, the elimination of the picnic table, the reduction in the amount of tables to two, to retain jurisdiction on the type of use and as an additional type of olive branch to the neighbors to explore additional plantings. He struggles with making it contingent on getting a final sign-off on the environmental just because there are a lot of different sides and arguments in a law suit, particularly one that's lasted a long time. We haven't had any opportunity in depth to review either side of the environmental lawsuit, so I probably would not want it contingent on a final letter.

Mike Sinneck said his chief concern is regarding health and safety, as the Environmental Commissioner it's got to be foremost in my mind. I am sensitive to the economic impact and reality you guys are living with, so if this is approved this evening I think it would have to be contingent upon successfully addressing that concern. We have an adverse impact that exists today, I don't know where the pollution came from but it's got to be fixed. I am worried about kids hanging out and sitting there and potentially exposing themselves to this chemical. I am also concerned about the additional traffic and the light pollution problem which I think needs to be addressed in some creative way. If those things can be addressed then I would probably vote for the subdivision.

John Burke said he is sort of torn; he doesn't have that much of a problem with subdividing the store. He would not want to see a picnic table outside, he would be happy with only two tables inside. He definitely thinks they should look into the possibility of getting some approval from the DEP to put something in to try and help your neighbors across the Street, I mean County. Getting to the DEP this is a very sensitive section of Town, this is an area where there is a lot of bicycles on the bike path, kids coming back and forth from school and so on. I don't like the idea of that time bomb sitting underground, I just don't and I would definitely want to have some sort of satisfaction on that. I don't know whether a letter from the DEP saying that it's totally cleaned up or it's all done or something, I think a couple of people commented that might never exist and it might not. But, something has to be done on that property. Somebody has to start doing something to clean that property up. Not just hire experts, not just do studies, but get something in there and get some work done and clean it up. I would never approve it without that contingency in there that that site has got to be somehow cleaned up. Council you have heard the Board, you have two choices, you can allow us to go with a vote or you can withdraw your application to a further date. At that point race judicator will not come into effect. If we do vote and it is turned down race judicator comes into effect and you will never be able to subdivide that store. Now, it's up to you and your clients what you want us to do. Mr. Lane asked if he could take a minute to talk to his clients. John Burke said you certainly can and why don't we take a five-minute break, you go talk to your clients and we will come back after that.

Motion for a five-minute recess made by Mayor Dempsey, seconded by Councilman McCarthy, all in favor none opposed.

Roll Call following recess:

Planning Board Members Present:

Mayor George Dempsey, John Muly, Patrick Callahan, Councilman McCarthy, Neil Hamilton, John Burke, Michael Sinneck, Leonard Sullivan and Peter Ragan.

Planning Board Members Absent:

Joan Harriman, Jay Price and Bill Buble

Mr. Lane said he has spoken with his clients and they want to go forward with the application and modify it, to provide for the subdivision, two tables and chairs, no picnic table. His concern with the DEP and getting a NFA letter in his experience is very difficult to obtain. His clients have no problem in removing the contaminated soil and work with the DEP and if they are allowed to subdivide get DEP approval of the tenant so that the DEP understands what use we plan for that site and they understand that there is no health risk posed to anybody there with regard to that. I don't know if the Board were to make the Resolution conditioned upon getting a NFA letter, I don't know that that could ever happen. My clients are inclined to go forward with their application and make a motion to modify it to reduce some of the use that we have asked for. Geoff Cramer said the tables and chairs, that's two tables and eight chairs, no picnic table outside, no table service, no waitress service. John Burke said and you have no problem with the Board retaining jurisdiction over. Mr. Lane said I like the Board I don't have a problem showing up and talking to you guys I wouldn't want to do that every year or two if we are rolling over tenants but if the Board were inclined to somehow limit it to a low impact use. They said they would have no problem going to the County and seeing what the maximum height would be along the County road there to put plantings and landscaping in there. Mr. Guttman said briefly, he takes issue with not being able to obtain the NFA letter from the DEP. To me that's a cop out. It's an issue of not wanting to go through and spend the money it's going to take to clean it up properly. My client spent years and hundreds of thousands of dollars to clean up their own property and obtain an NFA but for the issue of this waste oil tank and did obtain an NFA with regard to its contamination. They can do the exact same thing. The reason the DEP which Mr. Constantino said the standard is .001 which is a very minimal, a very small amount perhaps per billion of PCE in the ground water for purposes and there's a reason it's set that way, it's a known carcinogen it's a bad, bad thing, once it gets in the water it's bad to have PCE. That's the reason for it. I will tell you though that if for some reason they cannot, it is not scientifically permissible but to suck out every drop of water to get it out, the DEP offers a thing called a Classification Area Exception which is tad amount to a NFA, basically the DEP says look it's going to cost you so much money to take out every little bit of PCE from the water that we will give you something like an NFA so while Mr. Constantino did say and in all respect to his statement, they will be able to get something from the DEP whether it's an NFA, a Classification Area Exception, something to say you did everything you were supposed to do to clean this up, please don't let them cop out of their responsibility, please require them to do this. I have no issue with them having the subdivision, let them make a living, I want them to make money, hopefully they will be able to clean up the site, but please put their feet to the fire, require them to do what they are supposed to do. That's the only reason I'm here today. John Burke asked Al and Geoff how much expertise you do have along these lines, can they get a conditional approval like Mr. Guttman said. Al said they certainly could, Mr. Guttman is correct in the Classification Exception, I really don't know enough about the case to give the Board any guidance here, the only documentation I have from the DEP is the letter from 2009, I have never seen any of the soil testing results, I don't know what if anything has been done. An NFA could take 20 years, or they could remove the contaminated soil and do some clean up and it could be relatively quick. I don't have enough information; I've never reviewed any of the soil logs. Geoff Cramer

said again he would say if you want to condition the approval upon either getting the NFA or like Mr. Guttmann seems to suggest a Classification Area Exception, providing that either ones in form and content that is satisfactory to the Board's Engineer. I could support that. John Burke asked Al Yodakis if that was ok with him. Al said he would be comfortable looking at that, again unfortunately he would love to be able to tell the Board right now I have looked through this case and I could tell you with a reasonable level of certainty yes in a year they could work through this, I don't know that. He asked Mr. Constantino if they have in place a remediation plan with the DEP. Mr. Constantino said yes, that's why they just wanted to say that they are going to be removing the soil, the DEP recommends us to remove the soil and I have two estimates to do that and we did send the other attorney that works for Mr. Guttmann what it is going to cost to get rid of the soil on my property. I have a consultant this week, it's in place to get rid of the contaminated soil that's the biggest thing with the DEP, when it gets in the water it's very difficult as you know. It might take years; I'm not just saying that because it's a fact. But, I am going to take out the contaminated soil if you want that to be a condition when I take out the contaminated soil, we'll get approval, and I don't know what else to say. We are working on it. Mr. Guttmann said there has not been a remedial action work plan filed, the only thing that has been done to date was I'll tell you the two exact things, they will not disagree with me. One thing was when the PCE was discovered, there was an issue of the safety of the workers and the customers in the building, so they required them to put in just like a radon system, a fan, a vapor system. They did because the DEP felt that was a very important health, safety issue, because it's a known carcinogen, the vapor is just like radon. That's number one, they did do that, and I'll give them that. The second thing they did which was only recently was to identify the scope and area of the contamination. Which was just recently done about a month ago, that was what the meeting with the DEP had. Other than that, nothing else has been done, no work plan, no identification of what's going to be removed, zero, zilch nothing, since 2000. Mr. Constantino said well that's because we have been waiting about a year to get access to the property. Mr. Guttmann said because you went through three different engineers. Mr. Burke had to call for order because there was cross talking between Mr. Guttmann and Mr. Constantino. Mr. Sinneck said he is not an expert in the DEP regulations, but he would presume and he would ask your opinion, that there is a process in place whereby a remediation plan can be submitted and approved by them to be adequate to remediate the issue. If we added a contingency to a potential motion here stipulating that the DEP had to approve the remediation plan as being adequate would that satisfy the concern. Mr. Guttmann said it wouldn't and let me explain to you why. Because that's step one of the process and I'm sure your engineer will let you know that is only a guideline, a plan to be implemented. It is what we intend to do, we intend to dig up this much dirt, suck up this much oil, do this, do that, it's just a plan. The most important part is the actual work, they have got to start digging up the soil to stop the further leaching of contaminants into the water, they have got to suck up the water, they have got to neutralize it, I'm not an Environmental Engineer but I'm sure your Engineer will let you know, that's just part one of a process that could take twenty years. When we cleaned up our property it took us a couple of years to do it, if they wanted to go at this instead of now we are now in year three since the DEP got involved, I'm sure everybody on this Board knows the DEP is so understaffed, so underfunded, they don't have money to do anything to move forward. Actually, they threatened them if they don't

move the DEP will get involved and there is a ten year waiting list of things to get involved. This property may not get remediated for twenty years. Mike Sinneck asked if there were a potential to Bond the remediation plan. Mr. Guttman said again he doesn't know, he's not an engineer, he's just a lowly attorney who tries to get things done. The only way you are going to know that this is going to be cleaned up is if they give you the Good Housekeeping seal of approval NFA or Classification Area Exemption, it's cleaned up, it's done that's what you can take to the bank to get a loan on a piece of property. Without an NFA or CAE no one is going to want to touch either one of these properties. It's up to them, if they want this approval and they want to move it, let them get off their duff and let them clean up this property. John Burke said he is torn with this. Mr. Constantino said they are in the process right now with the process to start with the clean up the soil, that's what we're doing we have the engineer it's just a matter of setting up the time to start cleaning up the soil, I don't know what else we can do. John Burke said the problem that he sees is that right now we don't have specific steps that we can take or that we can put in this Resolution for you to take to get this done. That's the problem. I personally think something has to be done and I personally agree I hate the term but we have to hold your feet to the fire that you have to get started and get it done. The problem is I don't see a way of doing that because I also agree that if we want the letter that could take years and that doesn't solve the problem of the store and the economics and so on and so forth. Mr. Constantino said the problem is that this is going to eventually go into litigation because it's in a litigation right now but we're being proactive and we're saying we are going to remove the soil, we're not the ones who potentially caused it, we don't know that yet. We are willing to take that first step. John Burke said we're just hashing over some things over and over again. Mr. Guttman said Mr. Sinneck had a capitol idea, if they don't wish to or if there is an issue of time let them make a condition that they do submit a work plan that gets approved by the DEP and that they post money, either by way of a Surety or other, that it will get done to the sufficient amount to the DEP, so either they put up sufficient money or Bond that it's going to get done or they get it done, that may be a resolution of moving this thing forward. Mr. Cramer said it seems to him the applicant has three things to do, three alternatives one you get an NFA, two you get a Classification Exemption, again very time consuming apparently, three you get an approval of a remediation plan by the NJDEP and you proceed to implement that either by access with the DEP or some type of bonding that is satisfactory to the NJDEP and our Board Engineer. Those are your three choices, I don't see any other. Mr. Constantino said the DEP tells you the steps that you have to follow and if you don't follow them you get fined. And that's thousands of dollars so it would be crazy for me not to do it, first of all it's my property and I'll never sell it it's contaminated, number one, that's the other thing, but if I don't do the steps that the DEP tells me they are going to fine me. So, isn't that enough? John Burke said personally I think what it comes down to in my mind is that the stipulation that if an approval is given that a stipulation be put in the Resolution that a plan be filed and approved by the DEP. I can't see us going any further than that. I don't think it's fair to ask the applicant to put up thousands, maybe hundreds of thousands of dollars in a Bond system on something like that, but that's my opinion. We're down to a point of where I would like to know what the Board would like to do. I'm asking for a motion. Neil Hamilton made a motion prior conditions and use of tables two with seating for eight, no outdoor picnic table, the shrubbery should be resolved with the County, we retain jurisdiction if they need to come

back to this Board proposed tenant or tenants that may be interested in renting the store and we will still need to condition the Resolution that no permits or work be done at the center or the subdivision prior to getting a letter of No Interest for remediation progress from the DEP so that we know that's a phase that's ongoing that they can be resolved. Our whole issue is that we know it's in effect and the Resolution states so that both your property and the Clark's property can in fact be sold and developed. That would probably satisfy this Board; Geoff can put that language in place to affect that. Geoff said and there is no table service at those two tables. The motion was seconded by John Muly.

Board Members Voting Yes:

John Muly
Neil B. Hamilton
Peter Ragan

Patrick Callahan
John Burke

Councilman Owen McCarthy
Leonard Sullivan

Board Members Voting No:

Mayor George Dempsey

APPLICATION APPROVED WITH STIPULATIONS

Michael Constantino asked if every potential tenant now I have to come in front of the Board for every store or just for this one. John Burke said just for this one particular store. Mike Constantino said and if he leaves, I have to come back again. John Burke said possibly, possibly not. Geoff Cramer said it depends what's in the Resolution. John Burke said it depends what Mr. Cramer puts in the Resolution and Mike Constantino asked if they could object to his Resolution. John Burke said you can certainly come, it will go to your attorney. Mr. Cramer said I will copy your attorney before the meeting.

APPLICATION #13-2011 – Dana, Ron – 378 First Avenue – 377 Beachfront – Block: 187 – Lot: 3 – Zone: R-4 – Use and Bulk Variances – John Burke said our Mayor and Councilman have to step down because this is a Use Variance. Geoff said that leaves seven members. Keith Henderson attorney for the applicant said he can live with seven. George Dempsey and Owen McCarthy recused themselves. Mr. Henderson gave his opening statement and asked the Board accept jurisdiction of the matter. Mr. Cramer said the file is in order and accepted jurisdiction. Mr. Henderson said he has one witness to call, Ronald B. Dana who was sworn in by Geoff Cramer along with Al Yodakis the Board Engineer. Mr. Henderson said in response to the Technical Committee's request for revised plans, he has plans and asked one be marked as Exhibit A-1 and then he passed out the remainder to the Board members, he said this is the same plan they have but has additional detail that was requested by the TRC. Mr. Henderson cross examined Mr. Dana who said he has lived in Manasquan since 1989 and at the present time he lives right next door at 381 Beachfront. The property next door and this property are consistent with the typical pattern of the Beachfront development of the house on the boardwalk and a house on First Avenue. He built the house he is presently living in. This property in question had the two buildings on it when he bought it about ten years ago. Other than changing windows and doors and siding he hasn't done anything else to the property. His wife has a medical condition that brought about the need for this application. She has MS and has had it for ten years. Her condition is now progressively worse than it was ten years ago. The reason he is asking the Board to convert the storage area on the house next door on First Avenue is to provide for a health care person for his wife. His wife's balance has deteriorated over the last few years. The person who they are proposing to live in this

newly created living space has been her aide for the last five or six years. His house is built as a family house and there is no space for privacy for an additional individual to have her own privacy as well as the wife. He has come up with a mechanism of letting them communicate with each other although they are in two separate buildings for part of the time. He will have a walkie-talkie that's live all the time from her bedroom. The existing space is currently used for his son's surfboards in that lower floor, it was heated when he got there, it has a shower, it has all the utilities there, it has heat, washer/dryer in there. That's the way it was when he took ownership. The people that owned that house built that large back house to keep the rental house in the front because they couldn't afford to live on the Beach all the time. They built that large home and that was their home for years, I forget their name but that house is just like it was when I bought it. Mr. Henderson said and so when you go in the garage is the space we're referring to on the same plane as the garage? Mr. Dana said yes, it's a lower floor. You go up two steps to get into that space because of the difference in elevation between the back house and the porch, it's just a natural incline as you walk up to the beach. There is also a separate entrance between the house on the beachfront and the house on First Avenue. Mr. Dana said there is an entrance for the lower unit as if it were a unit. Mr. Henderson asked to convert that space to living space aside from putting appliances and amenities in what really needs to be done, is it just sheetrock and some studs? Mr. Dana said sheetrock, a partition wall, it's only just the one room, a little kitchen area, something comfortable for her, she spends her whole time there, something comfortable enough that she would want to stay. The aide doesn't have a license to drive a motor vehicle. There are four parking spaces here two in the garage and two outside. On the adjacent space that he owns, that has two dwellings also and that has a three full car garage and three right behind it and then two on each side within our property lines. He has a total of eight spaces on that property. He would stipulate that if this person ever does get her driver's license she could use one of these spots. Finally, at some point in time however it happens this aide will no longer be living there for his wife and he is willing to restore that to the existing condition and Mr. Henderson said that completes Mr. Dana's testimony and he has some legal comments he would like to make. Mr. Henderson said as you know this is a Use Variance and the applicant is seeking to modify a previous Resolution #23-1979 in order to convert a portion of the elevated basement and by that he means it's two stairs over the existing garage level to this area for an apartment for a temporary use. Unfortunately because the Manasquan Zoning Ordinance for the R-4 Zone only permits two living units on an individual lot, this is going to create a Use Variance because of the density it's three units on one lot. The applicant is required to satisfy the criteria under section D of the Statute which requires that you prove certain criteria in order to get a D Variance. It's specifically in the positive criteria, he would suggest to the Board that in the case law and the statutory law there has been a change over the last ten years or so which is more accommodating to dealing with housing with these kinds of issues. He quoted a specific example from 1997. He quoted other cases. He addressed the reports, first the Technical Review Committee, he has clarified the dimensions of the floor plans that were submitted with these new plans, they show an interior and exterior dimensions of the space involved. The floor plan should identify each level of the building, we're not dealing with the second floor apartment, that's completely unaffected by this and the applicant has testified as to the layout of the garage verses the space and he thinks Neil from his days back when and certainly Pat now have

probably seen this space. It's been there, when we acquired it there has been no change, it's just two steps up and it's to an area to which Mr. Dana's has never used except for his son's surfboards. Finally you asked that the garage doors be shown on the floor plans that's been done. Because there is a requirement for a window over that bedroom that has also been shown on the revised plans. The applicant has stipulated that this living space would be returned to storage at the conclusion of this current use. In terms of your Engineer's letter 2.1 on page two we've discussed the issue of the parking, 2.2 we've discussed the long-term use for the unit, 2.3 we've shown the window in the bedroom, 2.4 we don't know where any mechanical equipment will go, we're inclined to put a wall unit in there because it's such a small space and it already has heat by the way, it's a heated space now. For the air-conditioning if we have to put a unit outside we are mindful of the Board's requirements of side-yard setbacks and we promise you we'll stipulate it will not be placed there. Finally there appears to be an encroachment of a concrete patio onto adjacent lot 2, this Board has seen the Birdsall plans from the subdivision in 1986, it was there then before he acquired it, he and his neighbor get along, it's never really been an issue and we don't propose to address any site improvements or anything exterior to the building. That's our case Mr. Chairman. John Burke asked Al to respond. Al said Mr. Henderson in his testimony has addressed every one of my comments. There were no questions of Mr. Dana from the Board members. Mr. Sinneck made a motion to open the meeting to the public, the motion was seconded by Neil Hamilton, all in favor none opposed. There was no audience participation. Motion to close the public portion of the meeting was made by Neil Hamilton, seconded by Leonard Sullivan, all in favor none opposed.

Neil Hamilton made a motion to approve the application with the Deed restriction and the return of the space to the original site upon the completion of the requested use, the motion was seconded by Leonard Sullivan.

Board Members Voting Yes:

John Muly	Patrick J. Callahan	Neil B. Hamilton
John Burke	Michael Sinneck	Leonard Sullivan
Peter Ragan		

No negative votes

APPLICATION APPROVED

John Burke asked for a two minute recess, John Muly made the motion which was seconded by Leonard Sullivan, all in favor none opposed.

Roll Call Following Recess:

Board Members Present:

Mayor George Dempsey	John Muly	Patrick J. Callahan
Neil B. Hamilton	John Burke	Michael Sinneck
Leonard Sullivan	Peter Ragan	

Michael Sinneck had to recuse himself as he had a conflict of interest.

APPLICATION #12-2011 – Miller, Lynn and Richard – 36 Clark Street – Block: 15 – Lot: 31 – Zone: R-2 – Bulk variances – Shed – Geoff Cramer swore in Lynn Miller, Richard Miller and David C. Miller. John Burke asked who is going to present the case. Lynn

Miller proceeded, she said they had made up three packets, each a mirror image of the other and Mr. Cramer marked one Exhibit A-1 and they passed the other two to the Board members. Mrs. Miller said she has lived in this house since 1966 which is 45 years, she has lived in Manasquan until she was ten years old and then they moved back in 1966. She used to think it was a great Town until about 20 years ago when they started getting kind of harassed and she knows that has nothing to do with the Board but anyway, on the packets there is one packet that shows our block and pictures of all the houses surrounding us from the Street, showing that you can't even see the sheds from the Street or the people's houses. The second packet has a picture of it seems when you guys moved over to the new office it seems a majority of all the records were lost as far as building permits and stuff, there was a building permit on one of these sheds but nobody can find it they went in the archives I think Mary can tell you. They couldn't find anything before that. But there is a building on our garage and one of the pictures shows our garage with just a regular peaked roof and that was dated 1990 I think it was when we got the permit to put a second story on the garage. Why we put that one in there is because it shows that the two sheds were on our property at the time of the building permit because the picture with the regular garage roof shows the two sheds there already there so they are not new sheds. That building permit was 1992 for a storage loft over the garage and the picture shows sheds before with no pitch on roof and the only other thing that we could actually find is in 2003 the appraisal, there's an appraisal in there that they do every ten years on that same packet that also lists two sheds on there. Mr. Cramer asked if the appraisal is like a tax record, property card. Mrs. Miller said the appraisal is a copy of what you do to re-evaluate properties every ten years. Mr. Cramer said this is from the Tax Assessor. Mrs. Miller said yes sir and so did the building permit came from that. That was just to kind of prove that there were two sheds there and they've been there for quite a long time. I had a whole bunch of other pictures but I couldn't actually prove dates on them so these are the only ones I gave you and the ones with all the pictures in it like I said there are four houses on our property and the yellow one is showing our property. We have like 14,539 square feet of property. There isn't any house that is even close to the amount of property we have so actually we have two lots so if you look at the lot on the corner of Clark and Gertrude that was the closest to us in square-footage and they put two houses on there, so technically we have almost a double lot, I don't know if that makes any difference. My question and my upsetment over this is that we had gotten a letter from the Code Department about a year or a year and a half ago, they don't know where the copies are of those because they were all thrown out when new people come in it seems like everything gets thrown out, we had a shed in disrepair ok, we had buildings that needed some work on it, and they had to be fixed. So, my son who works full-time, my husband is in his eighties and can't really hardly barely walk started fixing the shed. The pictures he's got in there where he took everything out of the sheds making me very unhappy because everything got ruined. He was trying to repair the sheds, they sent us a letter and we have had Code people and everything because of complaints by a neighbor over the last twenty years coming in and out, seeing these buildings never saying that there was anything against two sheds. Now from what I gather, it was only ten years ago that there was an Ordinance put in that you could only have one shed per property, that was the purpose of showing you the time line on these sheds. With these people coming and going not one person had ever said anything about two sheds and at the time that the sheds were put up there was nothing on size or

anything else and one of them we did have a building permit and I forget what it was to add onto it or what but that was like 35 years ago and we don't have copies of that. We had gotten after my son was working on it, like I said he works full-time, sometimes two jobs so he really didn't have a whole lot of time to do it. Her son David said let me take over here. Pretty much my father on this particular picture here, this shed was built by my father originally 35 years ago. He said that he started building it and a building inspector came and told him he needed to get a building permit for this particular shed here. This other one is a green house that was next to it, originally it was a three story fort, this was built probably three to four years after the shed was built. I don't know if there was ever a building permit for that originally. After that it was turned into a chicken coup the top two stories were taken off of it and I had forty chickens at one time in there. In 1990 I began building the greenhouse there on that site what you see in this picture that did not have a building permit for that, I did not get a building permit. We had inspectors that came and inspected it because we had complaints about the heating system or something about the propane tank. Mrs. Miller said 15 years after it was built. David said no well, the problem with the shed that was built by my father was that we had groundhogs that were living underneath the shed and undermined the cinder blocks that it was sitting on, we did some maintenance on it but we never actually put it back on the cinder blocks because it kept caving in because of the burrows underneath. We did dispatch the groundhogs. I did put a new roof on the thing twenty years ago and then about five years ago I used the original sheathing, I just ripped the roof off and replaced the shingles and then five years ago I put a new roof on it again and put 5/8 plywood over top of the old plywood. Now, on this picture here when I had to rebuild it because it was so rotted on the bottom, I was trying to save the roof part of it because the roof has only been on there five years, subsequently it collapsed on me so I had to replace the whole entire roof as well. That's pretty much the background on that. That's pretty much it but the thing was I wasn't trying to re-build the whole thing; I didn't want to re-build the whole thing I wanted to do as little as possible on it. We did move it the five feet off the property line. Lynn said we were told by the Code person that they would never let us keep two sheds because this shed was only 2 1/2 feet off the property line. Though a lot of buildings that are next to us are three feet off the property line and so they told us to stop building it so what they did was they had to raise it up and this picture shows where it was originally and he had to put cement blocks. David said pretty much I jacked it up and put pipes underneath it and had a come along and me and my brother pushed it, my father did the come along. My main concern is I want to keep the re-built shed. If I have to tear the other structure down, that's fine with me I don't have a problem with that. Lynn said she does. David said I want to keep the re-built shed and the size it is, that's my main concern. Lynn said my main concern is 35 year old sheds I don't understand how if you put an Ordinance in and that one was not touched, not anything and why nobody send us things repair something and you repair it and then you tell us that we have to get a building permit for it and go before the Code people to get a Variance because it's new when it's like been there 35 years and like I said when he said we had to be five feet off the property line so he can keep the one we moved it and like I said it just really concerns me that nobody checks into any of these things and on the re-evaluation bill I believe we are being taxed fully for one of the sheds and have been being taxed on it. I was told that they weren't taxable but I think I read that right that the re-evaluation thing shows that we are being taxed on that one. David said and the other thing

is we've got one of the biggest lots in Manasquan at least on our block anyway. We are 75 by 180.53. Lynn said no matter what we do we're told by somebody to do something and then we do it and then we're told that we can't do it and we have to tear it down and I just feel like we're being harassed. Mr. Cramer asked Mr. Miller there is a survey you provided to this Board that shows all the improvements on the property prepared by Mr. O'Malley, correct? David said we have it yeah. Mr. Cramer asked which of the two sheds behind the house is the one that you want to keep. David said the first one in the backyard, the last one in the line there. Geoff asked if it's the one that is square as opposed to a rectangle. David said right, the one that's 14 X 12. Lynn said and she's not sure if that's the one that's being taxed or if it's the other one. John Burke said you keep bringing that up but I will tell you that's no concern of ours. John asked about the other shed and what is that being used for, I can understand the one you are re-building but you have said three or four different things. David Miller said the other one was originally a greenhouse and then I changed it, I have four kayaks, two are mine and two are my brothers, and mainly it's storage for the kayaks otherwise they would have to be stored outside. Lynn Miller said and ladders and he works in construction and he's got all his ladders. David said mostly for the kayaks. Lynn said because the whole yard is all gardens and flower beds. John Burke asked what's being stored in the shed in question. David said the shed that was re-built I have my lawn mowers, my landscaping equipment, my power tools and things like that have to go back in there, they are not in there right now because they are stored out in the yard and they are covered. Lynn said and he works as a roofer so all that is there. David said and that's why I need the size of this too, I never changed the size. Lynn said I would like to keep both of them because of storage, I can't go up and down stairs because I have a problem, my husband forget about going up and down stairs ever. David said the thing is the kayaks would have to be out in the backyard because I don't have room in the shed for them, I only have room for my landscaping equipment and things like that. Geoff Cramer said but the kayaks could be outside. David said well they could. Lynn said we have somebody who complains about everything and it's going to be twenty years of this nonsense. Geoff Cramer said I gather from the testimony you are providing to the Board tonight that what you want to do is you want to keep the newer of the two sheds, I know you want to keep both of them but the Ordinance says you can only have one. Lynn said but the Ordinance was put in only ten years ago. Geoff said I know that. David said yes we want to keep the re-built shed and if we could keep the other one at all possible then we would like to keep both, but I want to keep the re-built shed and keep it the size it is, because it's also oversized. Geoff said they are both oversized. David said I know that. Lynn said at the time they weren't oversized, you had no size. David said the greenhouse which was the one between the two structures is seven feet off the property line, there used to be a tree behind it, that's why it wasn't any closer, and then the other one was originally two and one half feet and we moved it to five feet, 5 inches off the property line. The shed we want to keep. John asked Patrick Callahan to put his two cents in here. Patrick said the reason this came about is we knew there were two sheds on the property, we knew they were kind of grandfathered in because they were there for a long period of time. Repairs are fine, but this amounted to a reconstruction, which is why Richard Furey sent the Notice of Violation and said you had to come for a Variance. Essentially, the only thing left in that shed were the roof rafters when we went to look at it and eventually you said that collapsed and you had to replace that also. After you had been given notice you

continued to work and we had to stop you again. That's why you are here for this Variance application. Lynn Miller said he continued to work because I think he told you he at least wanted to wrap it up so it wouldn't all rot in the rain. Patrick said he told us that when we went to your home, because we had notice that work was going on. If you had come to us and said look I need to wrap this up for the weather or whatever we may have worked with you on that, but the work continued after you were told to stop and it was a reconstruction it wasn't a repair. Patrick said let me ask you about the two-car garage, what do you store in there, a two-story garage? Mr. Miller said I have most of my, I change the oil in my cars and do mechanical repair, I have jacks and motor. Patrick said I'm thinking can't you make some room in that garage to store your lawn equipment? David said he has all his mechanical tools for working on a car in there and there is really no room. He's got power tools of his own that he's got in there and I would also like to say something else, I didn't plan on having to re-build this shed. It just so happened that it was so far gone that I had to re-build it. There is about 10% of the original shed is still there, but I never planned and I also didn't want to spend all this money on it either. That's why I'm more interested in keeping the new shed than the other one on the property, it's more user friendly, the other one is long and thin, it's hard to store stuff in and it's good for storing kayaks but it's not good for much else. Patrick Callahan said I understand you didn't plan on this but once you went beyond repair to a re-construction then the shed would have to be removed unless you got a Variance. If you had done some repairs on it then there wouldn't have been a problem with it but you've gone beyond that. Lynn Miller asked if the first one could still be grandfathered in. John Burke said let's let the Board ask questions, ok it's our turn. Owen McCarthy asked looking at these pictures the newer shed is the further one from your garage, correct? David said yes, Lynn said no, oh the new one yes that was actually the 35-year old shed. Owen asked if there is a roof over that. David said there was a plastic clear greenhouse plastic over it originally and then I put a rubber roof on top of that so there is no sheathing on that roof it's just that caging that's on there. Owen said the garage is a two-story structure, correct? Lynn Miller said yes and we got a building permit for that. Owen said I see that and it was dated 1992, what's the second floor of the garage used for? Mr. Miller said he has exercise equipment up there; there are mattresses and household items. David said it's really not usable for anything I have because you have to climb up a flight of stairs to get it up there and it's really not useful at all. Lynn said the roof is such that there's not much room up there because of the way the roof is built. John Burke asked Neil Hamilton if he was involved in this in the past in any way. Neil said he was never on the property from his recollection but he was called to the site from neighbors, he does recall the large garage and the shed, he doesn't recall two sheds until John Muly and he did a site visit last week and we observed two sheds. Neil said with the second story again in the garage, I just don't know why some use can't be made of that garage in the winter time, he thinks the second floor should have some use. If the exercise equipment is not of service to you and you have mattresses up there that are not being used then they should be removed. David said let me answer that, first of all the kayaks I have, one of them is 11 ½ feet, the other is 13 and the other two are 9-feet and they are very, very tough to get upstairs or through a hatch up there. Neil said you could build a holding rack or something to put them on the back end of the garage to get them off the ground. David said I don't have a problem getting rid of the building in the middle because I can store them outside but can we? It depends if the neighbor complains about

them I don't know if you have an Ordinance about how many boats or kayaks you can have in the backyard. I have four of them; I don't want to run into more problems again down the road with the Town. I'm trying to work with you guys. Neil said if they are neatly stacked and you don't have grass and stuff growing all over and they don't contain any water, I don't think Pat's going to have a problem with that. Patrick said we don't have an Ordinance against multiple kayaks. We do however have an Ordinance on Property Maintenance and that has been another issue a lot of clutter and stuff stored outside. David said that's because I have no place to put it. Patrick said it was that way and it's been ongoing for awhile before the shed work. Lynn said no it's been part of the shed work because a year ago when you sent us that letter that's when he started repairing it and he had to take everything out. Patrick said it's my understanding that there has been a lot of clutter on site for quite awhile. Lynn said from one person. Patrick said not just from one person. Lynn said yes it is. Patrick said no I'm telling you because I've spoken to several people. Lynn said she knows the person in the back told us. David said don't get into that, don't start arguing with them. John Burke asked if other members of the Board have any questions or comments. He said what the Board is hearing here is you would like to keep the shed that you are re-building and I can understand that and I personally don't have a problem with that, but you do have two sheds and I would rather there be one. David said what he would suggest if you would give me thirty or sixty days to take down one shed and then grant me the Variance for the other shed, that would be fine. John Burke said the only Variance you need on the other shed is going to be size. The height is ok, it's square footage only. The height is under ten feet; it's just 68-square feet over the 100-square feet it's supposed to be. John Burke said in his mind he doesn't see a problem with approving the Variance for the shed to be re-built the way you have it, five feet off the property line and so on. Under the condition that the other shed is taken out. Lynn said with what time frame. David said I need at least 30 days. Lynn said what's the time frame. Patrick said the Technical Review Committee recommended 30 days. Lynn said 30 days for what; I thought it was 30 days after. John Burke said 30 days to take out the other shed before you can continue re-building the big shed. David said can I do it the opposite way, Lynn said why, David said because it's going to take awhile. Lynn said wait, I think what he's concerned with is that if you go the other way, it says in that thing that 30 days after he finishes the shed, but he's working like 12 hours a day so he doesn't know exactly when that shed going to be completed and he's afraid if it's not completed within a month or two then you are going to say. Mayor Dempsey said but he's saying he could take it down before he finishes the other shed. David said yeah right. Lynn said where is he going to go with that stuff, it's my property and I'm paying the taxes on it. Let him finish this shed so we can move some of the stuff from the other shed into this. John Burke said hold on a second. Owen McCarthy said he really doesn't have a problem with getting it down to one shed but if you want the time to build it I think we should impose some reasonable deadline to get it done. This isn't going to be a year worth of construction, I think that I'm really indifferent to however you want it as long as we get down to one shed, whether it's take down the one shed you don't want, then deal with finishing the other shed or if it's completing construction on the shed within reasonable time period, see what everybody else up here has to say, let the shed get finished within a reasonable time period, whatever 45, 90 days whatever everyone comes to a consensus on and once you are done with the shed you are working on then you have 30 days from then to get rid of the

middle shed. Patrick Callahan asked so what reasonable amount of time do you need to complete the shed. David asked what if it's not done. Lynn said if you give us a 3 month time period to finish the one shed alright and if it's not finished in 3 months then we will tear the other one down. Owen said no it doesn't work that way, we want to see that shed finished, period. Lynn said so if you give him 3 months and then he'll have 30 days after to tear the other one down. John Burke said no, he's going to have 30 days after the completion of the re-building of the other shed, but we will put a time period on that, but the 30 days will not start until you finish the other shed, because we don't want the stuff from the one shed out in the yard causing more problems while you are trying to re-build, it doesn't make sense to tear down that middle shed until the other shed is finished. There are two separate things; alright you have to finish re-building the shed. Now, how long do you estimate it will take you to re-build that shed? David said about 3 months. John Burke said that will take you into just before it starts getting too cold to actually do the work, so you are going to have to finish then because in the winter you probably aren't going to be able to do that much work on it. Patrick said 90 days, I don't have a problem with that. Geoff Cramer said the 90 days starts to run from the date of adoption of the Resolution. Owen said why don't we make it 60 days with the 60 days running a month from now, so you are going to get your 90 days but it will be 30 days until we pass the Resolution next month, then you'll have 60 days so you still end up with your same amount of days. George Dempsey said he can't start work until the stop work order is lifted. Patrick said it was only from Zoning, there is no building permit, because you don't need a building permit for the shed even though it's oversized, it's only a Zoning stop work order. Patrick said he can have Dick lift the stop work order and issue a Zoning Permit for the shed. Mayor Dempsey said alright. Lynn Miller said so we have 90 days to finish it. John Burke told everyone to stop talking all at once. Patrick Callahan said he can have Dick Furey lift the stop work order, he will speak to Dick Furey tomorrow and he can over ride that and grant it based on our vote tonight, prior to the Resolution. So they can commence work. John Burke said 90 days will start at the end of the week. Owen said be careful and be mindful of the time, because that 90 days is going to start and you are going to be on the clock, so I wish you well. David said the only question he has is he is going to have a metal roof put on it and he has to have a contractor for that, now I can't do it myself in other words. I am wondering if as far as getting a permit to have a contractor to put a roof on the shed. Patrick said it's only a shed so it's only going to require a Zoning Permit. *Geoff Cramer said so all the work on the shed to be retained is to be completed within 90 days from the lifting of the stop work order from the Zoning Officer. Then you have to remove that shed 30 days to remove the shed closest to the house. Mayor Dempsey said within 120 days the shed should be done and the other one gone.* David said ok gotcha sounds good to me.

Motion to open the meeting to the public made by Mayor Dempsey, motion seconded by Patrick Callahan, all in favor none opposed. There was no public participation, motion to close the public portion of the meeting made by Mayor Dempsey, motion seconded by Patrick Callahan, all in favor none opposed. *Owen McCarthy proposed a Resolution that we allow 90 days for the completion of the shed that work is being performed on to start from whenever Mr. Furey and Pat lift the stop work order, and at the expiration of that 90 day window they will have 30 days to remove the middle shed structure. Motion was seconded by Patrick Callahan.*

Board Members Voting Yes:

**Mayor George Dempsey
Councilman McCarthy
Leonard Sullivan**

**John Muly
Neil B. Hamilton
Peter Ragan**

**Patrick Callahan
John Burke**

APPLICATION APPROVED WITH STIPULATIONS

John Burke explained the process to the Millers.

RESOLUTION #11-2011 – Abrahamsen, Ryan and Jayme – 289 Beachfront – 288 First Avenue – 289 Beachfront, 288 First Avenue – Block: 181 – Lot: 4 – Zone: R-4 – Demo and construction of a new home on the Beachfront and two-story garage apartment on First Avenue.

Motion to memorialize the Resolution made by Councilman McCarthy, motion seconded by Patrick J. Callahan.

Board Members Voting Yes:

Mayor Dempsey, John Muly, Patrick Callahan, Councilman McCarthy, John Burke, Leonard Sullivan and Peter Ragan

RESOLUTION MEMORIALIZED

RESOLUTION #05-2011 - Malick, Joella and Harvey – 20, 22 First Avenue – Block: 165 – Lot: 2.03, 3, 4 – Zone: R-4 – Minor Subdivision with Bulk Variances

Motion to memorialize the Resolution made by John Muly, motion seconded by Councilman McCarthy.

Board Members Voting Yes:

Mayor Dempsey, John Muly, Patrick Callahan, Councilman McCarthy, John Burke, and Leonard Sullivan

Motion to approve the vouchers made by Mayor Dempsey, seconded by Peter Ragan, all in favor none opposed.

VOUCHERS APPROVED FOR PAYMENT

There were no minutes for approval.

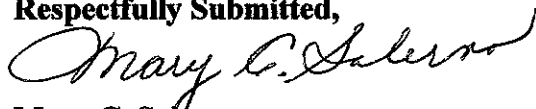
John Muly said the Sign Committee got together once and reviewed the existing Ordinance and also got into some discussion of the new digital signs that are coming out and there are some things that John got for them that they reviewed. They looked at what can and can't be done to regulate them and what we might want to consider regulating. In the meantime there is one that just went up and you might want to take a look at that when you get a chance, he understands Pat has heard about that one a couple of times already. Patrick said it's Dr. Paperth's Office and it's flashing and it's pretty bright and on 24/7 and they are going to see him tomorrow. John Muly said that is one of the things they want to look at, the hours these signs can operate and whether they flash or just stay lit or if they do change over the time frame. It could be 30-seconds, or a minute. We were also talking about the distance from intersections and so on that you don't want something like that either. Owen said the message may not be flashing a lot but it seems the background behind the message rotates and I stopped for a traffic light and it was changing every two or three seconds, it really draws your attention. John Muly said it gets complicated on how you want to regulate them so this is what we are talking about; we got interrupted by the

Hurricane too. John Burke said you guys will have to come up with recommendations for us and then we'll go from there. John Muly said just to let the Board be aware, just look around to what's happening there's one in Belmar we also know the Elk's were looking for one. Mike Sinneck said we promise we won't have ours flash. John Burke said also if you drive on Route 35 you will see quite a few of them in Wall Township. One thing he wanted to mention is if we do allow signs with a scrolling message or any message on it he has been told that if they are remotely operated not hard wired into a building, remotely operated that they can be put on the State alert system for lost children and so on. He thinks if we do allow that kind of stuff we should require them if possible to go on the State system. Mike Sinneck said the one they are looking at for the Elk's is programmable from anywhere.

Mayor George Dempsey made a motion to adjourn; the motion was seconded by Patrick Callahan, all in favor none opposed.

MEETING ADJOURNED AT 10:07PM

Respectfully Submitted,

A handwritten signature in cursive script, reading "Mary C. Salerno".

Mary C. Salerno
Planning Board Secretary